(1)

No. 85-1358

Supreme Court, U.S.
FILED
AUG 7 1986
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1986

WILLIAM L. LUKHARD, COMMISSIONER OF THE VIRGINIA DEPARTMENT OF SOCIAL SERVICES, PETITIONER

v.

ONA MAE REED, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE SECRETARY OF HEALTH AND HUMAN SERVICES AS RESPONDENT SUPPORTING PETITIONER

CHARLES FRIED
Solicitor General

RICHARD K. WILLARD
Assistant Attorney General

LAWRENCE G. WALLACE
Deputy Solicitor General

GLEN D. NAGER
Assistant to the Solicitor General

ROBERT S. GREENSPAN
MARLEIGH D. DOVER
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

43pp

QUESTION PRESENTED

Whether the Social Security Act requires that lump-sum personal injury awards be treated as "resources," rather than as "income," for purposes of computing eligibility for an amount of AFDC benefits.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statutory and regulatory provisions involved	2
Statement	3
Summary of argument	8
Argument	10
The statute does not require the Secretary and the states to treat lump-sum personal injury awards as "resources," rather than as "income," when computing a family's eligibility for and amount of AFDC benefits	10
A. The Secretary's interpretation of the term "income" reasonably implements the policies of the proration requirement	11
B. The Secretary's interpretation is entirely consistent with the language, structure, and legislative history of the Act	13
C. The court of appeals' opinion provides no persuasive reason for overturning the Secretary's interpretation	16
Conclusion	19
Appendix	1a

TABLE OF AUTHORITIES

Cases:

Aluminum Co. v. *Central Lincoln Util. Distr.*, 467 U.S. 380	16
American Paper Institute, Inc. v. *American Electric Power Service Corp.*, 461 U.S. 402	10
Andrus v. *Glover Construction Co.*, 446 U.S. 608	14
Atkins v. *Rivera*, No. 85-632 (June 23, 1986)	10
Batterton v. *Francis*, 432 U.S. 416	10
CFTC v. *Schor*, No. 85-621 (July 7, 1985)	16
Chevron U.S.A. Inc. v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837	10
Coakley v. *Sunn*, No. 85-1233 (D. Hawaii Apr. 2, 1986)	12
Dandridge v. Williams, 397 U.S. 471	19
Haig v. *Agee*, 453 U.S. 280	16
Heckler v. *Turner*, No. 83-1097 (Feb. 27, 1985)	9, 14, 15, 17, 18

Cases – Continued:

	Page
Jackson v. *Guissinger*, 589 F. Supp. 1288	12
Littlefield v. *State, Department of Human Services*, 480 A.2d 731	12
Miller v. *Youakim*, 440 U.S. 125	16
NLRB v. *Bell Aerospace Co.*, 416 U.S. 267	16
Rosado v. *Wyman*, 397 U.S. 397	3
Shea v. *Vialpando*, 416 U.S. 251	3, 11, 13
Sweeney v. *Murray*, 732 F.2d 1022	11-12
Udall v. *Tallman*, 380 U.S. 1	10, 12, 16
United States v. *Morton*, 467 U.S. 822	16, 19
United States v. *Riverside Bayview Homes, Inc.*, No. 84-701 (Dec. 4, 1985)	10
Walker v. *Adams*, 741 F.2d 116	17
Watkins v. *Blinzinger*, 789 F.2d 474	12, 15, 17, 18, 1a
Watt v. *Alaska*, 451 U.S. 259	18
Young v. *Community Nutrition Institute*, No. 85-664 (June 17, 1986)	16
Zenith Radio Corp. v. *United States*, 437 U.S. 443	16

Statutes and regulations:

Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 845	5
Social Security Act, Tit. IV, 42 U.S.C. 601 *et seq.*	3
§ 401, 42 U.S.C. 601	3, 11
§ 402(a), 42 U.S.C. 602(a)	3
§ 402(a)(7), 42 U.S.C. 602(a)(7)	13
§ 402(a)(7)(A), 42 U.S.C. 602(a)(7)(A)	11
§ 402(a)(7)(B), 42 U.S.C. 602(a)(7)(B)	4
§ 402(a)(7)(C), 42 U.S.C. 602(a)(7)(C)	4
§ 402(a)(8)(A), 42 U.S.C. 602(a)(8)(A)	4, 13
§ 402(a)(17), 42 U.S.C. 602(a)(17)	2, 4, 5, 11
§ 402(a)(18), 42 U.S.C. 602(a)(18)	4
§ 402(a)(31), 42 U.S.C. 602(a)(31)	4, 13
7 U.S.C. 2014(d)(8)	18
26 U.S.C. 61	18
26 U.S.C. 104(a)	18

Statutes and regulations – Continued: Page

45 C.F.R.:
Section 201.0 *et seq.* 3
Section 233.20(a)(3)(i) 4
Section 233.20(a)(3)(ii)(F) 2, 6

Miscellaneous:

Administration's Proposed Savings in Social Services Programs, Hearings Before the House Subcomm. on Public Assistance and Unemployment Compensation of the House Comm. on Ways and Means, 97 Cong., 1st Sess. (1981) 15

47 Fed. Reg. (1982):
p. 5648 5
p. 5656 5
p. 5675 5

48 Fed. Reg. (1983):
p. 7010 18
pp. 7010-7011 18

49 Fed. Reg. (1984):
p. 45558 5
p. 45561 5-6

51 Fed. Reg. (1986):
p. 9196 6
p. 9197 ..... 6, 15
p. 9205 6

51 Fed. Reg. 9205 (1986) (to be codified at 45 C.F.R. 233.20(a)(3)(ii)(F)) 19

Handbook of Public Assistance Administration (Sept. 1957) 15

S. Rep. 97-139, 97th Cong., 1st Sess. (1981) 11

Staff of House Committee on Ways and Means, 97th Cong., 1st Sess., *Description of the Administration's Legislative Recommendations Under the Jurisdiction of the Ways and Means Comm.* (Comm. Print 1981) .. 14

Staff of Senate Committee on Finance, 97th Cong., 1st Sess., *Proposals for Reductions in Spending Programs Under the Jurisdiction of the Senate Finance Committee* (Comm. Print 1981) 14

House Comm. on Ways and Means, 97th Cong., 1st Sess., *Tax Aspects of the President's Economic Program* (1981) 12

In the Supreme Court of the United States

OCTOBER TERM, 1986

No. 85-1358

WILLIAM L. LUKHARD, COMMISSIONER OF THE VIRGINIA DEPARTMENT OF SOCIAL SERVICES, PETITIONER

v.

ONA MAE REED, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE SECRETARY OF HEALTH AND HUMAN SERVICES AS RESPONDENT SUPPORTING PETITIONER

OPINIONS BELOW

The opinion of the court of appeals (Pet: App. 1-22) is reported at 774 F.2d 1270. The opinion of the district court on summary judgment (Pet. App. 23-51) is reported at 591 F. Supp. 1247. The opinion of the district court on preliminary injunction is reported at 578 F. Supp. 40.

JURISDICTION

The judgment of the court of appeals was entered on October 10, 1985. A petition for rehearing was denied on November 14, 1985 (Pet. App. 55-57). The petition for a writ of certiorari was filed on February 11, 1986, and was granted on June 23, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Section 402(a)(17) of the Social Security Act, 42 U.S.C. 602(a)(17), states, in pertinent part:

> [A state AFDC plan must] provide that if a person * * * receives in any month an amount of income which, together with all other income for that month not excluded under paragraph (8), exceeds the State's standard of need applicable to the family of which he is a member—
>
> (A) such amount of income shall be considered income to such individual in the month received, and the family of which such person is a member shall be ineligible for aid under the plan for the whole number of months that equals (i) the sum of such amount, not excluded under paragraph (8), divided by (ii) the standard of need applicable to such family, and
>
> (B) any income remaining (which amount is less than the applicable monthly standard) shall be treated as income received in the first month following the period of ineligibility specified in subparagraph (A).

45 C.F.R. 233.20(a)(3)(ii)(F) provides, in pertinent part:

> When the AFDC assistance unit's income, after applying applicable disregards, exceeds the State need standard for the family because of receipt of nonrecurring earned or unearned lump sum income [including for AFDC, title II and other retroactive monthly benefits and payments in the nature of a windfall, *e.g.*, inheritances or lottery winnings, personal injury and worker compensation awards, to the extent it is not earmarked and used for the purpose for which it is paid, *i.e.*, monies for back medical bills resulting from accidents or injury, funeral and burial costs, replacement or repair of resources, etc.],

the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size. Any income remaining from this calculation is income in the first month following the period of ineligibility.

STATEMENT

The Aid to Families with Dependent Children (AFDC) part of the Social Security Act (Title IV, Part A of the Act, 42 U.S.C. 601 *et seq.*) establishes a cooperative federal-state assistance program. Participating states provide financial support to needy dependent children and the persons who care for them, and the federal government partially reimburses the states for the expenses they thereby incur. The AFDC program is designed to "encourag[e] the care of dependent children in their own homes * * * and to help [those children's] parents or relatives to attain or retain capability for the maximum self-support and personal independence * * *" (42 U.S.C. 601).

States participate in the AFDC program at their option and, at the present time, all states have chosen to do so. Accordingly, each state has formulated and administers an assistance plan that conforms with the requirements of the statute and the implementing rules and regulations of the Secretary of Health and Human Services (Secretary). See 42 U.S.C. 602(a); see generally 45 C.F.R. 201.0 *et seq.* In conformity with these requirements, each state has established a statewide standard of need, "which is the amount deemed necessary by the State to maintain a hypothetical family at a subsistence level." *Shea* v. *Vialpando*, 416 U.S. 251, 253 (1974). Furthermore, each state has specified "how much assistance will be given, that is, what 'level of benefits' will be paid." *Rosado* v. *Wyman*, 397 U.S. 397, 408 (1970). And, in administering its assistance plan, each state distinguishes between a

family's "resources" and its "income": If the family's "resources" or "income" in a given month exceeds state-specified limits (subject to federally prescribed maximums), the state cannot provide the family with AFDC benefits that month. See 42 U.S.C. 602(a)(7)(B), 602(a)(17), 602(a)(18). The maximum figure for "resources" generally exceeds that for "income."

The statute requires the states to exempt certain assets and monetary receipts from these "resources" and "income" calculations. For example, the state must "exclude" from a family's countable "resources" the family home, an automobile (up to $1,500 in value), and, at the state's option, certain items deemed essential to daily living. See 42 U.S.C. 602(a)(7)(B)-(C); 45 C.F.R. 233.20(a)(3)(i). Likewise, the state must "disregard" certain earnings of AFDC family members and relatives in determining a family's countable "income." See 42 U.S.C. 602(a)(8)(A), 602(a)(31). However, the statute does not otherwise assist the states in distinguishing between "resources" and "income" for AFDC benefit eligibility determinations.

2. Prior to 1981, the states were required to treat all "income" or "resources" received in one month as "resources" in succeeding months—until the money was spent. This, however, had an anomalous effect on any family that received a nonrecurring lump sum payment (*e.g.*, a retroactive social security payment, an inheritance, a lottery winning, etc.). The family had to spend the lump sum receipt as quickly as possible or face potential disqualification from AFDC benefits (because their "resources" might exceed allowable limits). Thus, though the statute was designed to encourage AFDC families to budget their money responsibly, its treatment of lump sum receipts had the opposite effect.

Accordingly, in 1981, the Secretary recommended that Congress amend the statute's treatment of lump sum receipts. See Letter to the Speaker of the House of

Representatives (May 5, 1981) and Attached Excerpt of the Section by Section Summary, Social Welfare Amendments of 1981 (Pet. App. 90-93). Specifically, the Secretary proposed that the states be required to prorate that part of a family's income which exceeds the state's monthly standard of need over a period of months—determined by dividing all lump sum receipts and other countable income by the applicable monthly need standard. See *id.* at 93. Congress concurred in the Secretary's suggestion and, in the Omnibus Budget Reconciliation Act of 1981 (OBRA), Pub. L. No. 97-35, 95 Stat. 845, enacted into law the Secretary's proposed proration requirement. See 42 U.S.C. 602(a)(17). The effect of the amendment was and still is, with exceptions not relevant here, to render a family that receives a substantial lump sum income payment ineligible for AFDC benefits for several months, even if the family dissipates that lump sum before the ineligibility period has expired.

3. The Secretary subsequently published rules to implement the new statutory proration requirement. See 47 Fed. Reg. 5648, 5675 (1982). In doing so, the Secretary noted that Congress had not specified that any change be made in the states' existing practices in defining "income." See *id.* at 5656. Accordingly, the Secretary observed, states could and should continue to exclude from "income" all lump sum monies earmarked and used for a specific purpose, such as the payment of medical bills. See *id.* at 5656.

Two years later, in another rulemaking proposal, the Secretary noted that some states were treating other "payments [that] Congress [had] intended [to] be counted and used to meet the family's future needs * * *" as resources, rather than as income. 49 Fed. Reg. 45558, 45561 (1984). The Secretary acknowledged that he had in the past permitted the states to treat some lump sum receipts as either "income" or "resources." See *id.* at 45561. But he

proposed that, under the 1981 statutory proration requirement, all states henceforth treat "all lump sum payments * * * as income under the AFDC program," unless "otherwise disregarded" by the statute or its implementing regulations. *Ibid.*

The Secretary received numerous comments concerning this proposal. See 51 Fed. Reg. 9196, 9197 (1986) (summarizing comments). Some commentators reminded the Secretary that, in enacting the OBRA, Congress had only "meant to change the methodology applicable to lump sum income[,] * * * not the definition of lump sum income" (*id.* at 9197). Thus, they argued that non-recurring lump sum awards, such as workers' compensation payments and personal injury settlements, had to be treated as "resources," and not as "income," of the AFDC family. *Ibid.* The Secretary responded that "some states have always considered such payments as income [and thus] there was no specific definition of lump sum income that * * * Congress [could have] intended to maintain." *Ibid.* Accordingly, he concluded that, "[g]iven the Congress' clear intent to have lump sums * * * used to meet future needs, States should not be allowed to exclude [lump sum receipts, such as personal injury and workers' compensation awards,] by calling them resources." *Ibid.* He then adopted a rule to that effect. See *id.* at 9205 (to be codified at 45 C.F.R. 233.20(a)(3)(ii)(F) (reproduced at page 2, *supra*).

4. In 1983, well before the Secretary had initiated the latter rulemaking proceedings, three of the private respondents filed this class action. 578 F. Supp. 40 (W.D. Va.). Each had received a personal injury or workers' compensation award and had been held ineligible for AFDC benefits. *Id.* at 41-42. The Commissioner of the Virginia Department of Social Services (Commissioner) had elected to treat their personal injury and workers' compensation awards as "income" and, applying the new statutory proration requirement, had determined that their prorated in-

comes were above the state's monthly need standard. *Ibid.* Respondents objected to the Commissioner's treatment of their personal injury and workers' compensation awards and asked the district court immediately to restore their AFDC benefits. *Ibid.* The district court granted the three respondents' motion for preliminary injunctive relief, but denied their accompanying request for class-wide preliminary relief. *Id.* at 45.

The district court subsequently certified the requested class and granted summary judgment in its favor (Pet. App. 23-51). The court agreed with the respondent class that, in enacting the proration requirement, Congress had not directed that all lump sums be treated as "income" (*id.* at 45-46). Relying primarily on dictionaries and the Internal Revenue Code, the court ruled that personal injury awards do not fit within the ordinary meaning of the term "income" and therefore are not among those lump sum receipts to which Congress had intended the proration requirement to apply. *Id.* at 41-51. Accordingly, the court held that the Commissioner and the Secretary had erred in denying benefits to the respondent class.

In October 1985, approximately five months before the final regulations were issued in the then-pending rulemaking proceedings, the court of appeals affirmed the judgment of the district court (Pet. App. 1-22). The court agreed with the district court that personal injury awards are not "income" within the ordinary meaning of that term. In the court's view, persons receive "income" only when they make a "profit or gain," and persons receiving personal injury awards make no such profit or gain (*id.* at 12). The court found nothing in the legislative history of the 1981 amendment to convince it that Congress had intended to depart from this conception of the term "income" (*id.* at 14-15). Finally, the court held that the Secretary's and the state's treatment of casualty loss

awards as "resources" and their treatment of personal injury and workers' compensation awards as "income" to be inequitable and unreasonable (*id.* at 15-16).

SUMMARY OF ARGUMENT

The court of appeals erred in overturning the Secretary's judgment that personal injury and workers' compensation awards may (and, indeed, should) be treated as "income" when computing a family's eligibility for and amount of AFDC benefits. The Secretary's interpretation gives reasonable content to the term "income" and promotes the policies underlying the proration requirement enacted by Congress in 1981. Congress adopted that proration requirement to encourage AFDC families to become self-sufficient and to reduce the costs of the AFDC program. Treating personal injury and workers' compensation awards as lump sum income subject to proration furthers these congressional goals. Therefore, in the absence of clear legislative intent to the contrary, the Secretary can reasonably require their proration.

Congress has expressed no contrary intent. While the statute does not define the term "income," its language indicates that Congress intended the term to reach all receipts that a family can use to support itself. Similarly, the statute's structure indicates that Congress intended to limit the payments that can be excluded from the benefit eligibility calculation; Congress specifically identified which monetary receipts the states must "disregard" in calculating an AFDC family's income. Significantly, personal injury and workers' compensation awards are not among them. The Secretary thus acts consistently with the sense of the statutory scheme in refusing to treat them as excludable from "income." The legislative history of the 1981 amendment fully supports this view: in enacting the proration requirement proposed by the Secretary, Congress did not prescribe any restriction on the lump sum

payments that the Secretary can include within the definition of "income." Indeed, since the Secretary has traditionally permitted the states to treat personal injury and workers' compensation awards as "income," Congress should be considered to have approved that settled practice in 1981 and thereby to have provided the catalyst for the Secretary's determination to require the states uniformly to treat personal injury and workers' compensation awards as "income." Given the Secretary's significant role in the drafting and discussion of the 1981 amendment, his interpretation of its use of the term "income" is entitled to particular deference.

The court of appeals' reasons for not deferring to the Secretary's interpretation of the term "income" are unfounded. The court's suggestion that personal injury and workers' compensation awards are not "income" because they do not produce "gain or profit" is erroneous: This Court has clearly indicated that gain or profit is not a *sine qua non* of "income" under the AFDC program (and, indeed, has contrasted the Act's use of that term with its use of the narrower term "earned income" in other provisions). *Heckler* v. *Turner*, No. 83-1097 (Feb. 27, 1985). Similarly, the court of appeals' reasoning that the definition of "income" in the Internal Revenue Code is inconsistent with the Secretary's definition of "income" under the AFDC program is both in error and irrelevant: The Internal Revenue Code broadly defines "income" and then specifically excludes personal injury and workers' compensation awards from that broad definition. The AFDC statute, by contrast, contains no such express exclusion and uses the term "income" for an entirely different purpose than does the Internal Revenue Code. Finally, the court of appeals' view that casualty loss and personal injury awards cannot equitably be treated differently is a moot point. The Secretary's new regulation requires the states to treat casualty loss and personal injury

loss awards similarly: Both are now treated as "income" subject to proration to the extent they are not earmarked and used for a specific purpose. Accordingly, there is no basis for sustaining the court of appeals' judgment barring the Secretary and the states from treating personal injury and workers' compensation awards as proratable "income" under the AFDC program.

ARGUMENT

THE STATUTE DOES NOT REQUIRE THE SECRETARY AND THE STATES TO TREAT LUMP-SUM PERSONAL INJURY AWARDS AS "RESOURCES," RATHER THAN AS "INCOME," WHEN COMPUTING A FAMILY'S ELIGIBILITY FOR AND AMOUNT OF AFDC BENEFITS

This case is governed by well-settled principles of statutory construction: A reasonable interpretation of a statute by the agency that Congress has entrusted to administer it is entitled to be enforced. See, *e.g.*, *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-845 (1984); *American Paper Institute, Inc.* v. *American Electric Power Service Corp.*, 461 U.S. 402, 423 (1983); *Udall* v. *Tallman*, 380 U.S. 1, 16 (1965). A court is not free to overturn an agency's interpretation simply because the court may prefer a different one, or because reasonable persons may differ as to the statute's meaning. *Chevron U.S.A. Inc.*, 467 U.S. at 843 & n.11. Rather, so long as the agency has reasonably sought to implement the statute in a manner that Congress had not proscribed, its interpretation must be upheld. See *Atkins* v. *Rivera*, No. 85-632 (June 23, 1986), slip op. 7; *United States* v. *Riverside Bayview Homes, Inc.*, No. 84-701 (Dec. 4, 1985), slip op. 9-10, 17; *Chevron U.S.A. Inc.*, 467 U.S. at 843-845 & nn. 11-14; *Batterton* v. *Francis*, 432 U.S. 416, 426 (1977). Under that view, the Secretary's interpretation of the term "income" in the AFDC program should be sustained.

A. The Secretary's Interpretation Of The Term "Income" Reasonably Implements The Policies Of The Proration Requirement

The Social Security Act provides that, in determining a family's need under the AFDC program, a state plan shall, "except as may be otherwise provided in paragraph (8) or (31) and section 615 of this title, * * * take into consideration any other income and resources" of the specified members of a family unit (42 U.S.C. 602(a)(7)(A)). In 1981, Congress added the requirement that the states must prorate the "amount of income which, together with all other income for that month not [expressly required to be disregarded by the statute], exceeds the State's standard of need * * * *" (42 U.S.C. 602(a)(17)). Since the Secretary's treatment of personal injury and workers' compensation awards promotes the policies underlying these provisions, it is a reasonable interpretation of the term "income."

That a state plan must take account of all species of income of an AFDC family reflects Congress' long-considered judgment that AFDC funds should be a source of last resort for the support of AFDC families. See *Shea* v *Vialpando*, 416 U.S. at 261; see also 42 U.S.C. 601. Thus, in 1981, Congress was specifically troubled to learn that the then "present treatment of [lump sum] payments ha[d] the perverse effect of encouraging the family to spend such income as quickly as possible in order to retain AFDC eligibility." S. Rep. 97-139, 97th Cong., 1st Sess. 505 (1981) (Budget Committee Report). Congress agreed with the Secretary that treating lump sum payments in this fashion was adding unnecessarily to the program's burgeoning cost (see *id.* at 505, 553) and undermining the statute's goal of helping AFDC families "attain or retain capability for * * * maximum self-support and personal independence * * *" (42 U.S.C. 601). It therefore enacted the proration requirement precisely "to promote responsible budgeting of lump-sum income by all AFDC families and to reduce AFDC disbursements * * *" (*Sweeney* v.

Murray, 732 F.2d 1022, 1027 (1st Cir. 1984); see also House Comm. on Ways and Means, 97th Cong., 1st Sess., *Tax Aspects of the President's Economic Program*, 265 (1981) ("This proposal will eliminate the disincentive for recipients to budget lump-sum amounts over a period of time while encouraging the use of these payments to meet basic needs")).

The Secretary's determination to allow (and now to require) states to treat personal injury and workers' compensation awards as "income" is fully consonant with, and in furtherance of, these long-standing and recently reaffirmed congressional goals. Accord, *Watkins* v. *Blinzinger*, 789 F.2d 474 (7th Cir. 1986); *Jackson* v. *Guissinger*, 589 F. Supp. 1288 (W.D. La. 1984); *Coakley* v. *Sunn*, No. 85-1233 (D. Hawaii Apr. 2, 1986). Personal injury and workers' compensation awards are not among those receipts that the state can statutorily "exclude" from an AFDC family's "resources." Thus, if personal injury or workers' compensation awards are not treated as "income" as they are received by the family, but nevertheless are added to the family's "resources," the AFDC family would have the same "perverse" incentive that Congress sought to eliminate by enacting the proration requirement—*i.e.*, the incentive quickly to dissipate the resource in order to ensure that they can continue to receive AFDC benefits. The Secretary's treatment of such awards as "income" subject to proration removes that incentive (and, not incidentally, lowers the cost of the AFDC program). See *Watkins* v. *Blinzinger*, 789 F.2d at 479; *Littlefield* v. *State, Department of Human Services*, 480 A.2d 731 (Me. 1984). Absent a clear indication of contrary congressional intent, that is an interpretation the Secretary is entitled to adopt. See *Udall* v. *Tallman*, 380 U.S. at 316.

B. The Secretary's Interpretation Is Entirely Consistent With The Language, Structure, And Legislative History of the Act

Congress has expressed no such contrary intent. The language, structure, and the legislative history of the statute fully support the Secretary's conclusion that personal injury and workers' compensation awards can (and should) be treated as "income" for AFDC purposes.

The Act does not expressly define the term "income" or exhaustively list categories of monetary receipts that must be *included* within it. But the Act does provide that the states must take into account "*any* other income and resources" of the family (42 U.S.C. 602(a)(7) (emphasis added). That language suggests that Congress intended the concepts of "income" and "resources" to be given broad scope. Congress used these terms in the statute to ensure that only "needy" families would receive AFDC support. See *Shea* v. *Vialpando*, 416 U.S. at 261. Thus, the most sensible reconciliation of the two terms is the one that best encourages a family to budget its income and resources to take care of itself. As noted above, the Secretary's treatment of personal injury and workers' compensation awards gives the statutory language this congressionally intended effect.

The structure of the statutory scheme reinforces this view. The Act identifies on its face categories of monetary receipts that must be *excluded* from an "income" calculation. See 42 U.S.C. 602(a)(8)(A) and (31). These exclusions reflect a considered judgment by Congress that certain kinds of receipts should not be regarded as funds available to meet a recipient family's monthly needs. Rather, Congress has determined that these receipts should be deemed precommitted to other uses. Significantly, personal injury and workers' compensation awards are not among the monetary receipts that Congress has indicated must be excluded. The Secretary, therefore, has reasonably concluded, in keeping with the statute's overall

benefit eligibility scheme, that such awards, to the extent that they too are not precommitted to other uses, should be deemed available to meet a family's monthly needs.[1] See *Heckler* v. *Turner*, No. 83-1097 (Feb. 27, 1985), slip op. 8-10; see generally *Andrus* v. *Glover Construction Co.*, 446 U.S. 608, 616-617 (1980).

The legislative history of the 1981 amendment to the AFDC program fully supports this view. When the Secretary proposed the proration requirement to Congress, he indicated that it would "specify that * * * large payments [such as insurance proceeds or retroactive benefit payments,] together with other income remaining after application of the disregards, would be considered as income in the month of receipt * * *" (Section-by-Section Summary, Social Welfare Amendments of 1981, attached to Letter from Secretary Richard S. Schweiker to Speaker Thomas P. O'Neill, dated May 5, 1981) (Pet. App. 93). The Senate adopted the Secretary's language in light of a staff report explaining that his proposal would "[r]equire that large payments, together with other income remaining after the application of disregards, be considered available to meet ongoing needs in the AFDC program." Staff of Senate Committee on Finance, 97th Cong., 1st Sess., *Proposals for Reductions in Spending Programs Under the Jurisdiction of the Senate Finance Committee* 33 (Comm. Print 1981); see also S. Rep. 97-139, *supra*, at 505. The House similarly understood that the Secretary's proposal would "[r]equire States to consider *all* lump-sum payments as income available to meet a family's needs." See Staff of House Committee on Ways and Means, 97th Cong., 1st Sess., *Description of the Administration's Legislative Recommendations Under the Jurisdiction of the Ways and Means Comm.* 53 (Comm. Print 1981) (emphasis added). Thus, as the Seventh Circuit recently noted after

---

[1] That is, of course, the effect of the Secretary's current regulation (set forth at page 2, *supra*).

thoroughly reviewing this legislative history, Congress did not "prescribe any restriction" on the lump sum payments that the Secretary can include within the definition of "income." *Watkins* v. *Blinzinger*, 789 F.2d 474, 480 (1986); App., *infra*, 12a.[2]

To be sure, neither the language of the proration requirement nor its legislative history indicates that Congress intended to change the meaning of "income" in 1981. But, as the Secretary noted in the rulemaking process, that is because "there was no specific definition of lump sum income that * * * Congress [could have] intended to maintain" or change. 51 Fed. Reg. 9197 (1986). The Secretary had previously allowed states to treat various lump sum payments, including personal injury and workers' compensation awards, as either "income" or "resources,"[3] and, accordingly, the practice among the states was varied in 1981 (see *ibid.*). Indeed, this is a principal reason that the President of the Welfare Recipients League gave for opposing enactment of the proration requirement. See *Administration's Proposed Savings in Social Services Programs, Hearings Before the House Subcomm. on Public Assistance and Unemployment Compensation of the House Comm. on Ways and Means,* 97th Cong., 1st Sess. 316 (1981) (complaining that the proration proposal would require AFDC families to budget personal injury awards). Accordingly, "[t]here is no reason to suppose that the Congress that enacted [the proration requirement] legislated in ignorance of" this practice (*Heckler* v. *Turner*, slip op. 12), and its "failure to change the

---

[2] For the Court's convenience, we have reproduced as an appendix to this brief the portion of the Seventh Circuit's recent opinion in *Watkins* that deals with the question at issue here.

[3] See Handbook of Public Assistance Administration, Part IV, S-3120 (Sept. 1957) ("a settlement of industrial compensation * * * *might* represent a [resource]") (emphasis added); see also *Watkins* v. *Blinzinger*, 789 F.2d at-480-481 & n.7, App., *infra*, 13a-14a & n.7.

scheme under which the [Secretary] operated is * * * 'persuasive evidence that the interpretation is * * * one [that] * * * Congress' " approved. *Young* v. *Community Nutrition Institute*, No. 85-664 (June 17, 1986), slip op. 9 (quoting *NLRB* v. *Bell Aerospace Co.*, 416 U.S. 267, 275 (1974)); see also *CFTC* v. *Schor*, No. 85-621 (July 7, 1985), slip op. 11; *Haig* v. *Agee*, 453 U.S. 280, 297-298 (1981); *Zenith Radio Corp.* v. *United States*, 437 U.S. 443, 457 (1978).

Indeed, it was Congress's enactment in 1981 that provided the catalyst for the Secretary's recent regulatory action. Prior to 1981, the distinction between lump sum "income" and "resources" was relatively insignificant. If not dissipated in the month of receipt, all lump sum "income" became "resources" in the following month (and potentially disqualified a recipient family from receiving AFDC benefits). But the 1981 amendment made the distinction one with important consequences and, therefore, for the first time, provided the Secretary with a substantial need to establish a uniform definition of "income" for orderly administration of the program. Cf. *United States* v. *Morton*, 467 U.S. 822, 835-836, n.21 (1984). Accordingly, in 1982 and 1986, when the Secretary undertook to provide the states with such a definition, he properly placed great emphasis on the intent of Congress in enacting the 1981 amendment. Since the Secretary had proposed that amendment and had made his views concerning its purpose well-known to Congress before it was enacted, his conclusions concerning its meaning and intended effect are entitled to particular deference. See *Aluminum Co.* v. *Central Lincoln Util. Dist.*, 467 U.S. 380, 390 (1984); *Miller* v. *Youakim*, 440 U.S. 125, 144 (1979); *Udall* v. *Tallman*, 380 U.S. at 16.

C. The Court of Appeals' Opinion Provides No Persuasive Reason For Overturning the Secretary's Interpretation

The court of appeals offered three principal reasons for overturning the Secretary's interpretation of the term "income" in this statute. First, the court stated that personal

injury and workers' compensation awards cannot be income because they produce no "gain or profit" for the recipient. Second, the court indicated that the Secretary's inclusion of such awards in AFDC income cannot be reconciled with their exclusion from "income" in the Internal Revenue Code. Finally, the court deemed it arbitrary and capricious for the Secretary to permit the states to treat casualty loss awards differently than personal injury awards. None of these reasons constitutes a proper basis for rejecting the Secretary's interpretation.

1. This Court has already held that "gain or profit" is not a *sine qua non* of "income" under the AFDC program. In *Heckler* v. *Turner, supra*, the Court held that the term "income" refers to the gross receipts a family has available for its support. See slip op. 8-10, 16-26. The Court contrasted the Act's use of the term "income" with its use in other provisions of the term "earned income" (see *id.* at 8-9), the latter concept being closely analogous to the "gain or profit" criterion adopted by the court of appeals here. This Court concluded that "earned income" is a "a subset of the broader term 'income' " (*id.* at 9), and that the broader term "income" refers to the gross receipts a family has available to meet its monthly needs (see *id.* at 8-10, 16-26). Personal injury and workers' compensation awards are generally available (at least in part) for that purpose; accordingly, the Secretary has reasonably required the states to treat those receipts as "income" to the extent they are not committed to other uses. See *Watkins* v. *Blinzinger*, 789 F.2d at 482-483 (App., *infra*, 16a-17a); see also *Walker* v. *Adams*, 741 F.2d 116 (6th Cir. 1984) (receipt of insurance settlement constitutes income).

2. Contrary to the court of appeals' view, the Secretary's interpretation of "income" is supported, rather than undermined, by the treatment of personal injury and workers' compensation awards in the Internal Revenue Code. There, the term "gross income" means "all income

from whatever source derived" (26 U.S.C. 61). Amounts received as personal injury and workers' compensation awards are excluded from this definition only by express provision. See 26 U.S.C. 104(a). No such exclusion exists in the AFDC provisions. That omission reinforces the view that Congress did not intend for a comparable exception to exist in the AFDC program. Moreover, the exclusion of personal injury and workers' compensation awards from the definition of "income" in the Internal Revenue Code simply indicates that Congress did not want to tax the recipients of such payments; it does not answer the question whether Congress wanted further to subsidize those recipients by providing them AFDC benefits as well. See *Watkins* v. *Blinzinger*, 789 F.2d at 477-478 & n.5 (App., *infra*, 6a-7a & n.5); see generally *Watt* v. *Alaska*, 451 U.S. 259, 266 (1981) (meaning of statutory term must be considered in context). As explained above, the Secretary has reasonably concluded that Congress did not intend to do so.[4]

3. Finally, the court's finding that the Secretary has arbitrarily and capriciously allowed the states to treat casualty loss awards differently from personal injury awards is now a moot point. The Secretary's rules now clearly require the states to treat awards for casualty losses and personal injury and workers' compensation losses similarly:

---

[4] Similarly, the treatment of personal injury and workers' compensation awards in the Food Stamp Program and various poverty guidelines that the Secretary has issued supports, rather than undermines, the treatment that the Secretary has given them in the AFDC program. In the Food Stamp Program and the poverty guidelines, "income" is an all-inclusive concept from which personal injury and workers' compensation awards are expressly excluded. See 7 U.S.C. 2014(d)(8) (Food Stamp Program); 48 Fed. Reg. 7010, 7010-7011 (1983) (poverty guidelines). The absence of a parallel exclusion in the AFDC provisions again indicates that no such exception was intended. In any event, those programs serve their own distinct purposes, and the meaning of the term "income" is properly determined only in the particular context of each program. See *Heckler* v. *Turner*, slip. op. 8-26; *Watt* v. *Alaska*, 451 U.S. 259, 266 & n.9 (1981).

Both are "income" subject to proration to the extent they are not earmarked and used for a specific purpose. See 51 Fed. Reg. 9205 (1986) (to be codified at 45 C.F.R. 233.20(a)(3)(ii)(F)) (page 2, *supra*) (any amount that is earmarked and used for "back medical bills * * * funeral and burial costs, *replacement or repair of resources*" is to be excluded for purposes of applying the proration rule) (emphasis added). See also *United States* v. *Morton*, 467 U.S. at 835-836, n. 21 (agency can by regulation properly resolve interpretive issues that arise in litigation). In any event, there is far-reaching legislative discretion to adopt such classifications in the context of social welfare programs. See, *e.g.*, *Dandridge* v. *Williams*, 397 U.S. 471 (1970).

In sum, there was no proper basis for the court of appeals' overturning of the Secretary's considered interpretation of the Act.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

CHARLES FRIED
Solicitor General

RICHARD K. WILLARD
Assistant Attorney General

LAWRENCE G. WALLACE
Deputy Solicitor General

GLEN D. NAGER
Assistant to the Solicitor General

ROBERT S. GREENSPAN
MARLEIGH D. DOVER
Attorneys

AUGUST 1986

APPENDIX

UNITED STATES COURT OF APPEALS, SEVENTH CIRCUIT.

Nos. 85-2366, 85-2481.

TOMMIE E. WATKINS, ET AL, PLAINTIFFS-APPLELLANTS,

v.

DONALD BLINZINGER, ET AL, DEFENDANTS-APPELLEES,

DOROTHY DAVIS, ET AL, PLAINTIFFS-APPELLANTS,

v.

GREGORY COLER, ET AL, DEFENDANTS-APPELLEES.

Argued Feb. 21, 1986.

Decided April 18, 1986.

Rehearing and Rehearing En Banc in No. 2366 Denied May 12, 1986.

Before BAUER, WOOD and EASTERBROOK, Circuit Judges.

EASTERBROOK, Circuit Judge.

Recipients of Aid to Families with Dependent Children (AFDC) are dropped from the program if their incomes exceed the "standard of need" in their states. They also are dropped if their "resources" exceed $1,000. A person who receives a lump-sum payment wants to have the payment called a "resource" rather than "income."

If the lump sum is a "resource," the recipient may spend it as he pleases; once cash on hand and other valuable assets dwindle to less than $1,000, the person will be restored to the rolls. If the lump sum is "income,"

however, it must be budgeted. Under 42 U.S.C. § 602(a)(17), the state's welfare officials divide the lump sum by the monthly "standard of need." See also 45 C.F.R. § 233.20(a)(3)(ii). The quotient gives the number of months the person will be ineligible for aid. For example, if a person receives $20,000, and the monthly standard of need is $500, the state will divide $20,000 by $500, producing a quotient of 40. The recipient will be ineligible for AFDC for 40 months. This method treats the lump sum as if the amount of the "standard of need" had been received as monthly income during the months following receipt of the lump sum.[1] A recipient who spends a lump sum classified as "income" and becomes destitute remains ineligible for the program nevertheless, while if the lump sum had been called a "resource" eligibility would have been restored.

We have consolidated two cases presenting the question whether lump sums that compensate victims for personal injuries are "income" or "resources" for purposes of AFDC. *Watkins v. Blinzinger* is a challenge to Indiana's implementation of the AFDC program, *Davis v. Coler* a challenge to Illinois's. Both states have chosen to treat lump sum payments attributable to personal injuries as "income," an option that the Department of Health and Human Services contends states possess.[2] Both cases

---

[1] The system gives the recipient the benefit of the interest that may be earned from the lump sum. If $20,000 is invested at 10% and drawn down at a level rate over 40 months, it will produce $590 per month. If a $20,000 fund invested at 10% is tapped for $500 a month, it will last for almost 49 months. The regulations disregard this complication, as do we.

[2] The Department has proposed a regulation that would require states to treat all lump sum payments as "income." See the proposed amendment to 45 C.F.R. § 233.20(a)(3)(iv)(E), published for comment at 49 Fed.Reg. 45561, 45567-68 (1984). It has not yet adopted this regulation, however, and its briefs take the position that until it does, the states may elect to treat lump sum payments as income or resources at their option.

were filed as class actions on behalf of all AFDC recipients who have received or will receive lump-sum payments on account of personal injuries.[3] Both courts sustained the states' positions, concluding that the states and the Secretary of Health and Human Services have discretion to treat such payments as either income or resources. *Watkins v. Blinzinger,* 610 F.Supp. 1443 (S.D.Ind.1985); *Davis v. Coler,* 601 F.Supp. 444 (N.D. Ill.1984). *Watkins* also rejected the plaintiffs' request for a declaratory judgment that until 1983 Indiana had been violating § 602(a)(17) by dividing the lump-sum payment by the portion of the "standard of need" (90%) that the state customarily paid to AFDC households, rather than by the "full" standard of need. The district court concluded that

---

[3] Despite Fed.R.Civ.P. 23(c)(1), which requires a decision on the application for certification of the class "[a]s soon as practicable after the commencement of an action brought as a class action", neither district court addressed the motion for certification until it had granted summary judgment to the defendants. Each court then declined to certify the class. The district court in Illinois refused to rule on the motion for certification, and the district court in Indiana denied the motion without stating reasons. Neither is an appropriate procedure. The decision on certification should be made quickly. Both sides have an interest in prompt certification. To the extent the district courts thought certification unnecessary once they had ruled for the defendants, they were mistaken. *Vickers v. Trainor,* 546 F.2d 739, 747 (7th Cir.1976). A deferred ruling converts the class action to an opportunity for one-way intervention, which Rule 23 is designed to avoid. *Roberts v. American Airlines, Inc.,* 526 F.2d 757, 762 (7th Cir.1975), *cert. denied,* 425 U.S. 951, 96 S.Ct. 1726, 48 L.Ed.2d 195 (1976). The defendants have an interest in obtaining the preclusive effect of a certification, which prevents members of the class from bringing the same suit later on. The plaintiffs, who may appeal the denial of relief, also have an interest in knowing whether the stakes on appeal include the interests of the whole class. Nonetheless, the defendants have not asked us to remand for certification of the classes to obtain a broader preclusive effect in the event we affirm, so we shall not discuss the question further.

because Indiana had switched to the use of the "full" standard of need, the claim was moot. We discuss this in Part II below.

I

There has been a good deal of litigation about the treatment of personal injury awards. *Reed v. Health and Human Services,* 774 F.2d 1270 (4th Cir.1985), pet. for cert., 783 F.2d 454 (4th Cir.1986) [*sic*], the only appellate decision on the question, holds that lump sum payments for personal injuries must be treated as "resources." The district courts are divided. *Jackson v. Guissinger,* 589 F.Supp. 1288 (W.D.La. 1984), and *Betson v. Cohen,* 578 F.Supp. 154 (E.D.Pa.1983), rev'd on other grounds sub nom. *Barnes v. Cohen,* 749 F.2d 1009 (3d Cir.1984), *cert. denied,* ____ U.S. ____, 105 S.Ct. 2126, 85 L.Ed.2d 490 (1985), like the two cases we have on appeal, hold that states may treat personal injury awards as income. *LaMadrid v. Hegstrom,* 599 F.Supp. 1450 (D.Ore.1984); *White v. Rahm,* No. C85-007T (W.D.Wa. Apr. 20, 1985); and *Payne v. Toan,* 626 F.Supp. 553 (W.D.Mo.1985), come out the other way. We disagree with these cases and with *Reed.*[4] The language and legislative history of § 602(a)(17) allow the states and the Secretary to define "income," and therefore Illinois and Indiana were entitled to treat compensation for personal injury as "income."

The statute uses the word "income" but does not define that word. We must look elsewhere for help. Start with the obvious. Money paid to compensate people for personal injuries is income in a fundamental sense. It may be spent. It is no different from money received as wages, though as we discuss later it is usually not taxable. Much of the value

---

[4] Because this opinion creates a conflict among the circuits, it was circulated to all judges in regular active service. See Circuit Rule 16(e). No judge requested rehearing en banc concerning the definition of "income" under § 602(a)(17).

of an award may represent lost wages, past and future. Whoever computes the award will start with the reduction in earnings, discount this to present value, and award that sum to the injured person. *O'Shea v. Riverway Towing Co.*, 677 F.2d 1194 (7th Cir.1982). That the injured person receives his future wages all at once through the award rather than in weekly installments over the course of a lifetime does not change the character of the money.

An award may have other sources, too—compensation for pain and suffering, for mutilation, for property damage, for emotional injury, for medical expenses. To the extent these reflect loss in future market opportunities, they are the same as a replacement of future earnings. The loss of a limb, for example, may reduce potential earnings, and the award for the loss therefore is a substitute for these earnings. The other bases of personal injury awards are less closely tied to the employment market, and plaintiffs urge us to treat these sources, indeed the whole award, as "compensation" rather than "income"—as an even trade for the loss of one's body or an injury to one's psyche. What makes one whole is not gain, and without gain there can be no income.

This is wrong as a statement of legal life. Suppose a person bought a painting for $50,000 in 1970 and sold it for $100,000 in 1985. During these 15 years the cost of living rose by more than 100%; the increase in the price of the painting did not keep pace with the reduction in the value of money. The painting's owner is poorer with $100,000 in 1985 than he was with a $50,000 painting in 1970. As an economic matter he has suffered a loss. Yet as a legal matter he has received $50,000 in "income," on which he must pay tax at the capital gains rate. The law looks to the receipt of money, not to the existence of economic gain. (We discuss below the extent to which this exchange would yield a "resource" in the AFDC program.)

The point may be plainer if we consider how anyone earns wages. To earn money a person must sell a little bit of himself. He sells time, and with it the right to engage in leisure; sometimes he sells his health (by working in a place with contaminants) or his body (by working in a place with physical risks). In exchange for giving up these things, he receives a wage. Over the course of a lifetime this will wear him down. Time and labor wear us all down. Is the wage "gain," or is it just "compensation" for the time, the labor, the risk of injury, that goes with work? The inquiry is metaphysical, the answer arbitrary. The answer of the tax system is that the wage is "income;" the answer of the tax protester is that the depreciation of the person (a wasting asset) exactly offsets the wage, and so there is no income. The plaintiffs in this case have taken the tax protesters' view of income, as only the excess of receipts over the costs borne to obtain those receipts.

The plaintiffs also say that pain and suffering is different, clearly not a substitute for earnings. Even here, though, things are not so clear. Football players sacrifice their bodies (they "play with pain") to perform their jobs. They trade pain for income. People sell parts of their bodies (blood and kidneys) for money. See Susan Rose-Ackerman, *Inalienability and the Theory of Property Rights,* 85 Colum.L.Rev. 931, 945-49 (1985) (collecting sources). What they get in return is "income." *United States v. Garber,* 607 F.2d 92, 102-05 (5th Cir.1979) (en banc) (dissenting opinion; the majority reversed a conviction because of improper instructions on wilfulness without resolving this question). People may participate in experiments in which they receive electrical shocks for incorrect answers, or they may take new drugs. Here, too, they receive income in exchange for the pain or the risk of ill health.

All of this is not to say that compensation for lost wages, or for pain, *must* be deemed "income." "Income" is a legal construct rather than an economic truth; there is no

natural meaning of a legal construct. The tax law has things both ways. It defines almost every receipt of money as income, see 26 U.S.C. § 61, and then establishes special exclusions for damages, see 26 U.S.C. § 104. The definition of income in § 61 includes damages representing income of every kind, see *United States v. Safety Car Heating & Lighting Co.*, 297 U.S. 88, 93-94, 56 S.Ct. 353, 356, 80 L.Ed. 500 (1936), though it does not cover a replacement of "capital." Section 104(a)(2) then allows exclusion of damages received "on account of personal injuries or sickness". Section 104(a)(3) establishes still another rule for sums received through accident or health insurance (which may cover the same losses): these proceeds are excludable to the extent the taxpayer purchased the insurance with taxable income, but the proceeds are taxable income if the insurance is "attributable to contributions by the employer which were not includible in the gross income of the employee".[5] This is not a line based on logic; it is a practical compromise. So, too, is any other working definition of "income." Should "income" be defined as all receipts, and then reduced by deductions and exclusions? The Internal Revenue Code takes this position; it could equally well have provided that all costs and expenses must be subtracted from gross receipts to produce the definition of "income."

The Secretary of Health and Human Services has recognized the arbitrary quality of any definition of "income" by allowing states (so far) to treat personal injury awards as income or not, at their option. This is certainly permitted by the analogy to the Internal Revenue Code, which defines "income" as gross receipts rather than net

---

[5] The Fourth Circuit's decision in *Reed* rested in part on a conclusion that damages awards are not "income" under § 104. See 774 F.2d at 1274. This is a misunderstanding of the Code. The awards are income by virtue of § 61 and excluded from taxation, in part, by virtue of § 104.

gain. See also *Heckler v. Turner,* ____ U.S. ____, 105 S.Ct. 1138, 84 L.Ed.2d 138 (1985), which holds that in calculating income under the AFDC program the Secretary may look to gross receipts, rather than to receipts less the expenses the recipient incurs in producing the income. (These costs are handled by a fixed "disregard" rather than deducting the actual costs of producing the income.)

To the extent the definition of income is a matter of logic, there is support for either treatment. When there is support for either treatment, the decision of the Secretary and the states must prevail. *United States v. Riverside Bayview Homes, Inc.,* ____ U.S. ____, 106 S.Ct. 455, 461-62, 465, 88 L.Ed.2d 419 (1985); *Chemical Manufacturers Ass'n v. Natural Resources Defense Council, Inc.,* ____ U.S. ____, 105 S.Ct. 1102, 1108, 1112, 84 L.Ed.2d 90 (1985); *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837, 104 S.Ct. 2778, 2782-83, 81 L.Ed.2d 694 (1984); *American Paper Institute, Inc. v. American Electric Power Service Corp.,* 461 U.S. 402, 423, 103 S.Ct. 1921, 1933, 76 L.Ed.2d 22 (1983) (if the interpretation is "a reasonable interpretation of the relevant provisions" it must be sustained). The Secretary has a general power of superintendence, and his treatment should be accepted unless beyond the pale of reasonableness. The Secretary's treatment is especially useful when, as here, he had a hand in drafting the legislation (on which more below) and offered a contemporaneous construction. See *Miller v. Youakim,* 440 U.S. 125, 144, 99 S.Ct. 957, 968, 59 L.Ed.2d 194 (1979); *Udall v. Tallman,* 380 U.S. 1, 16, 85 S.Ct. 792, 801, 13 L.Ed.2d 616 (1965).

All welfare legislation depends on the interaction of the definition of income, the guaranteed level of support, and the rate at which support is withdrawn as income rises. States largely control the standard of need and the degree to which more income leads to a reduction in support. See

Heckler v. Turner, supra, 105 S.Ct. at 1142 & n.3. It is not possible for a court to change one of these variables without affecting all. Because AFDC is a program of cooperative federalism, and because states control most of the important variables, the Secretary's position that the states also may include or exclude certain items from the definition of "income" is entitled to considerable respect. If the Secretary (or a court) forced a state to exclude an item from income, it might respond by reducing the payments to all recipients of AFDC. A court should require such a revamping of the program only if the legislation at hand leaves no alternative.

The question, then, is whether Congress left the Secretary and the states but one option—to treat personal injury awards as "resources." The language of the statute offers no help. The plaintiffs rely on the legislative history, but this turns out to be no more illuminating. Section 602(a)(17) was § 2304 of the Omnibus Budget Reconciliation Act of 1981 (OBRA).[6] OBRA was a Christmas-tree bill amending scores of laws in pursuit of fiscal savings. Until § 602(a)(17) was enacted, a recipient of a lump sum would become eligible for AFDC again as soon as he had spent the money. The Secretary drafted new language, which became § 602(a)(17), and proposed it to Congress as a method to induce recipients of AFDC to conserve nonrecurring receipts—and not incidentally to reduce the cost of the AFDC program. Congress enacted § 602(a)(17) exactly as the Secretary proposed it.

---

[6] There have been two amendments since 1981. A change effective July 18, 1984, inserted "earned or unearned" before "income" to make it clear that all sources of income must be budgeted. A further change effective October 1, 1984, established that the statute applies to all people receiving AFDC benefits and not just those who had other earned income. See § 2632 of the Deficit Reduction Act of 1984, Pub.L.98-369. Neither of these changes affects the structure of § 602(a)(17), which for purposes of this case we may take as the product of OBRA alone.

The Senate Committee on Finance approved the proposal with the remark: "[L]ump-sum payments should be considered available to meet the ongoing needs of an AFDC family. The present treatment of such payments has the perverse effect of encouraging the family to spend such income as quickly as possible in order to retain AFDC eligibility. The committee amendment would require that such income received in a month be considered available as income in the month that it is received and also in future months. . . . [A]ny amount of income that exceeds the initial month's needs standard would be divided by the monthly needs standard, and the family would be ineligible for aid for the number of months resulting from that calculation." S.Rep. No. 97-139, 97th Cong., 1st Sess. 505 (1981), U.S. Code Cong. & Admin.News 1981, pp. 396, 771. In another section of the report the Committee used "retroactive social security benefits" (*id.* at 436, U.S. Code Cong. & Admin.News at 702) as the sole example of the sort of lump-sum payments that would be considered "income." A summary by the staff of the pending proposals states the effect of the change this way: "Require that large payments, together with other income remaining after the application of disregards, be considered available to meet ongoing needs in the AFDC program. . . ." Committee on Finance, Staff Report, "Proposals for Reduction in Spending Programs," Part I, at 33 (Committee Print 1981). The committee in the House also endorsed the Secretary's proposal but did not discuss the subject separately in its report. A section-by-section analysis of the Secretary's proposal appended to the House report explains that the proposal would "[r]equire States to consider all lump-sum payments as income available to meet a family's needs. . . . Any excess sum in the month when received would be carried forward for later use." Committee on Ways and Means, Staff Report, "Description of the Administration's Legislative Recommendations," at 53 (Committee Print 1981).

The plaintiffs allow that the states' definition of "income" is consistent with the purpose of the legislation. The more receipts are defined as "income," the more recipients of AFDC will be induced to conserve and budget their funds, and the less the AFDC program will pay out. Yet the plaintiffs also observe, accurately, that the legislative history does not define the "income" that is subject to the budgeting rule of § 602(a)(17). The staff summaries in both House and Senate say that the language applies to all "large payments" (Senate staff) or "lump-sum payments" (House staff), which implies that damages awards from personal injuries must be "income." But the words of the staff are not the equivalent of statements in committee reports, and the implication that all lump-sum payments are income may be inadvertence rather than considered conclusion. The subject was simply not under discussion.

The statements of the Secretary are a little more useful, but also not conclusive. For example, the Secretary's message of May 5, 1981, transmitting his proposals to Speaker O'Neill, contains much language about the benefits of inducing the budgeting of "large payments," but the Secretary did not offer a definition of income. The Secretary's summary of the draft bill states in part: "Under current law, there is no way to assure that large payments, such as lump-sum payments of insurance proceeds, or retroactive benefit payments, are considered available to meet current needs over a period of time, even though the family eligibility can be curtailed for the month of receipt. The proposal would specify that these large payments, together with other income remaining after application of the disregards, would be considered as income . . ." Transmittal of Secretary Schweiker to Speaker O'Neill at 10-11. The Secretary's testimony explaining the proposal offers another illustration but still no definition. The testimony states: "When a large amount of money is received as a lump sum – for example, an inheritance – we

will consider it as income available for support not only in the month it is received but to meet future needs." Secretary Schweiker's prepared statement before the Senate Committee on Finance, at 18. Again the Secretary invites us to infer from the examples of insurance proceeds, retroactive payments of benefits, and inheritances, that *all* large lump sums are "income"; again the plaintiffs properly respond that the Secretary never said this, and that each of these three illustrations could be distinguished from awards of damages for personal injuries. Inheritances are "gain" by plaintiffs' lights; retroactive payments of, say, workers' compensation benefits are wage-substitutes; insurance proceeds could be from kinds of insurance other than disability.

The inescapable fact is that Congress wanted to compel recipients of AFDC to budget lump-sum receipts of "income" but did not consider what "income" might be. Perhaps the Secretary and many Members of Congress assumed that all lump sums are "income," but this was not the subject of debate or decision. The most that can be said is that Congress did not prescribe any restriction on the definition. Any definition that includes particular lump sums within the category "income" is consistent with the purpose of § 602(a)(17) to reduce the incentive to spend large receipts quickly. Because the Secretary has the discretion to define income in any way consistent with the will of Congress, this is enough support for his position.

The plaintiffs have two final lines of argument. One is that because Congress did not *change* the definition of "income" in 1981, the Secretary should have stuck with the approach in force in 1981, which would have classified personal injury awards as "resources." The other is that the Secretary must be consistent in defining resources, and that because a regulation defines the receipts from the sale or exchange of a resource as a resource, the Secretary also

must define personal injury awards—the equivalent of receipts from the sale or exchange of the AFDC recipient's person—as resources.

The Fourth Circuit was persuaded in *Reed* that "income" means only net gain, and that because Congress did not change this meaning in 1981 damages awards cannot be income. 774 F.2d at 1275. We have discussed above the reasons why "income" may mean gross receipts as easily as it means net gain. The Supreme Court in *Heckler v. Turner* used gross receipts as the meaning of income for purposes of AFDC, and there is no reason why damages on account of personal injury should receive a different treatment. See also, *e.g., Walker v. Adams,* 741 F.2d 116 (6th Cir.1984) (treating as "income" for purposes of AFDC a payment received as an insurance settlement for the demolition of a car). The plaintiffs reply that the Secretary himself has treated personal injury awards as "resources" since 1957, when a "Handbook of Public Assistance Administration" informed states that they must treat as "income" any lump sum that represents "accumulated current income." This meant, the Handbook said, that Social Security benefits and workers' compensation benefits are "income" even if paid in lump sums. According to the plaintiffs, however, the Handbook told states to treat as "resources" compensatory payments for the loss of a hand or foot. This means plaintiffs conclude, that all recoveries for personal injuries must be "resources."

The Handbook is not as clear as the plaintiffs portray it, however. It says only that payment for the loss of a hand or foot "might" be a resource.[7] The Handbook leaves this

---

[7] Here is the full quotation: "The [state] agency should make certain that the kind of resources considered 'lump sum' payments are in fact in the nature of a non-recurring sum or a windfall and *not* a resource that represents accumulated current income received in a single sum. For example, the initial [Social Security] payment representing an accumulation of current monthly benefits would not under Bureau

decison to the state. Perhaps more interesting, it instructs states to treat accumulated workers' compensation payments—an administrative substitute for awards of damages—as "income." So, too, disability payments under the Social Security system, still another means of compensation for personal injuries, are unquestionably "income" for purposes of AFDC. All in all, this Handbook supports the Secretary more than it supports the plaintiffs. The plaintiffs also rely on briefs attempting to summarize the Secretary's policy. These are not useful guides; the Secretary's handbooks and regulations, not the efforts of lawyers to summarize them, create the agency's policy. Cf. *SEC v. Chenery Corp.*, 318 U.S. 80, 94-95, 63 S.Ct. 454, 462, 87 L.Ed.2d 626 (1943).

The plaintiffs' final ground, tracking the Fourth Circuit, is that states must treat like things alike. The Secretary has promulgated an "equitable treatment" regulation, 45 C.F.R. § 233.10(a)(1), to this end. Both Illinois and Indiana treat as a "resource" cash from the sale or exchange of another "resource." So, for example, if a family sells its refrigerator and receives $100, that money is a "resource." So, too, if the family's car is wrecked and the family receives insurance proceeds, those proceeds are a "resource." The Fourth Circuit concluded that the

---

policy represent a 'lump sum.' In like fashion, industrial compensation payments representing accumulated weekly or monthly amounts would not be thought of as 'lump sum' payments. On the other hand, a settlement of industrial compensation as the result of loss of hand or foot might represent a 'lump sum' payment." Handbook of Public Assistance Administration, Part IV, S-3120, at 1 (Sept. 7, 1957) (emphasis in original). The passage is hard to understand because of changes in terminology. In 1957 "Lump sum" denoted payments that were not counted as income. It is also important to understand that the addressees of this advice were state and local administrators. In current terminology the Handbook told these administrators that they must count accumulated income-substitutes as income, but that they "might" treat compensation for loss of body parts as a resource.

disparity between the treatment of the replacement of "resources" and the treatment of damages awards—which it saw as just another receipt for the sale or exchange of an asset, one's person—violated the equitable treatment rule of § 233.10(a)(1). 774 F.2d at 1275.

This reasoning is circular, however. The rule treating as a "resource" the proceeds of the sale or exchange of a "resource" treats likes alike. A household that has the $100 rather than the refrigerator is little different from the household with the refrigerator and no cash. The family still has less than $1,000 in assets. Because the exchange does not change the family's command over real resources, it does not occasion a change in eligibility for AFDC—whether or not the family chooses to use the $100 to buy a new refrigerator, or the insurance proceeds to buy a new car. (If the exchange produced a gain, the family must "spend down" to $1,000 again.) The question in this case is *whether* the receipt of damages for personal injury is a mere exchange of one asset for another. A person who has "exchanged" pain and suffering for cash has greater market opportunities at his disposal; he can use the cash to improve his position. We assume that the "equitable treatment" regulation does not require wages to be treated as "resources" on the ground that the worker "exchanges" sweat and time for money. Because most income is produced by exchanging something (time, energy, risk of injury) for money, it is not dispositive that *some* kinds of exchanges (refrigerators for money) are not "income." The tax system regularly distinguishes between receipts from the sale or exchange of property (taxed only to the extent price exceeds basis, and some like-kind exchanges are not taxed) and receipts attributable to other sources, such as labor (people have no "basis" in themselves). We do not think a state violates the "equitable treatment" regulation by drawing the same sort of distinction. We have explained above that the Secretary and the states are entitled

to treat damages on account of personal injuries as more similar to wages or other gross receipts than to exchanges. It follows that the Secretary and the states need not treat damages awards in the same way they treat the sale or exchange of refrigerators.

Although we have concluded that the Secretary and the states are authorized to treat the award of damages for personal injuries as "income," we do not imply that the exercise of this authority is always desirable. The AFDC program has only two categories, "income" and "resources," and two categories are insufficient to exhaust the variousness of experience. Cf. *Stephens v. Heckler*, 766 F.2d 284 (7th Cir.1985). Awards for personal injuries will represent past and future income in part, punitive damages in part, pain and suffering in part, and medical expenses in part. An approach that sweeps all into "income" overstates the amount of cash that an award makes available to the family, just as surely as an approach that sweeps all into "resources" understates the family's income. Cf. *Schweiker v. Gray Panthers*, 453 U.S. 34, 48, 101 S.Ct. 2633, 2642, 69 L.Ed.2d 460 (1981). Suppose a person receives $20,000, half of which represents lost future wages and half of which represents the present value of medicine that the injured person must use for the rest of his life. Only $10,000 of this award is available to meet household expenses; the rest must be invested and spent on medicine many years hence. If the state requires the family to use the whole $20,000 for subsistence, which under § 602(a)(17) is the result of calling the whole $20,000 "income," there will be nothing left to buy the medicine. The reply Illinois gave at oral argument—that the state will furnish the medicine without cost to all recipients of AFDC—assumes that a family stays on welfare forever. This is not so, and a state ought not to increase the likelihood of a family's needing to stay on welfare by appropriating to itself the benefits of awards that are designed to cover medical costs.

So the Secretary's definition of income may produce harsh results. It is not an unlawful definition on that account, however, because the result will be unpleasant no matter what. Even if the $10,000 for medicine were called a "resource," the recipient would be disqualified from the AFDC program until he had spent all but $1,000 of the money. So even if the money designated for medicine were called a "resource," as plaintiffs wish, the state still would not allow the recipient to devote the money to its intended purpose. Too, the statute offers routes to ameliorate the harshness of calling everything "income." The AFDC program has a separate limit on the kind of "income" that a recipient must apply toward subsistence. The state must exclude from income a series of "disregards" (discussed in *Heckler v. Turner, supra*) that are proxies for the costs of generating the income. Perhaps an appropriate "disregard" could or must be matched against the portion of an award representing medical expenses. We do not consider this question here, as the parties have not raised it. Moreover, § 2632 of the Deficit Reduction Act of 1984 allows states to shorten the period of ineligibility created by § 602(a)(17) in order to take account of the fact that lump sum payments may cover fixed expenses and so not be available to meet the costs of living. See also the interim implementing regulations, 45 C.F.R. § 233.20(a)(3)(ii)(F), 49 Fed.Reg. 35586, 35591-92 (Sept. 10, 1984). Indiana has exercised its option under § 2632 and excludes from "income" the portion of an award of damages attributable to medical expenses. In the hypothetical we have given, Indiana would treat only $10,000 of the $20,000 award as income.[8] Illinois represented at oral argument that it has

---

[8] The operation of Indiana's policy is illustrated by the case of Gaynel Diamond, one of the representative plaintiffs. She received a payment of $3,302.20 on account of an accident. Of this $1,802.20 was for medical expenses and $1,500 was for pain, suffering, disfigurement, and permanent impairment. The state applied the

not exercised this option. This may be heartless, but it is not unlawful. To the contrary, the fact that § 2632 gives states an *option* establishes that they may treat as "income" receipts that they could as readily exclude, and that they may disqualify families from the program for lengthy periods when shorter periods would be as satisfactory from Congress' perspective. Whether to treat medical expenses as "income" is a question Congress has committed to the Secretary and the states.

II

[This portion of the opinion deals with an Eleventh Amendment issue.]

* * * * *

AFFIRMED.

$1,802,20 toward medical expenses, which had been paid by Medicaid. It treated only the $1,500 as available for living expenses. This application of the method of § 602(a)(17) produced a disqualification from the AFDC program for five months. (Illinois, too, excludes past medical expenses; the principal difference is that Indiana also would exclude future medical expenses.)

☆ U.S. GOVERNMENT PRINTING OFFICE: 1986—491-507/20297